TEN

That respondents testified to Congress that section 14 of the Act applies to veterans in the "Civil Service" and the "Unclassified Service or Excepted Service."

> The Veterans' Preference Act, as I said, applies to Veterans, and it applies to Veterans not only in the Civil Service but also in the Unclassified Service. The act of 1912 applies to persons in the classified service. (Hearing on H.R. 7439, Page 7)

ELEVEN

That respondents stated to the federal courts that section 14 of the Act does not apply to veterans in the "Unclassified Service" but only to veterans in the "Civil Service."

> We need not consider the government's contention that Kirkpatrick and Priestly were not "employed in the civil service" within the meaning of sec- 14 . . . (198 F2d 535)

TWELVE

That respondents testified to Congress that persons in the "Excepted or Unclassified Service" are not required by law to serve a "Probationary or Trial Period."

> Persons in the excepted or unclassified service are NOT by LAW required to serve a Probationary or Trial Period . . . the terms of section 14 are Equally applicable to veterans in the Excepted Service as well as to veterans under the COMPETITIVE system. (Hearing H.R. 7439, page 98, now P.L. 733)

THIRTEEN.

That respondents stated to the federal Courts that persons in the "Excepted or Unclassified Service" are required by law to serve a "Probationary or Trial period."

> Defendant urges that completion of the prior Probationary period does not suffice. (Bander case Page 376, Priestly and Kirkpatrick cases 198 F 2d 534)

FOURTEEN

That respondents testified to Congress that a "Probationary or Trial Period" applies to positions in the "Civil Service, ONLY."

> Normally when we speak about persons who have completed their probationary or trial period, we are talking about people holding civil-service positions, because so far as persons not holding civil-service positions there is no such thing as a Probationary or Trial Period.
>
> Now, "Having completed his probationary or trial period," that language applies peculiarly to civil-service positions, and there aren't any other cases in which there is a probationary or trial period. (Hearing H.R. 7439, Page 11)

FIFTEEN

That respondents stated to the federal Courts that "Probationary or Trial Period" applies to all positions.

> . . . there has been a requirement for "a period of probation before any absolute appointment or employment" in the civil service (Bander case 376; Priestly and Kirkpatrick cases, Page 534)

SIXTEEN

That respondents conferred "Competitive Civil Service Status" upon petitioner at the time of his appointment September 30, 1948.

> You have a competitive civil service status. . . appointment on September 30, 1948. Signed by J. E. Beckman.

SEVENTEEN

That respondents testified to Congress that there are "Permanent Employees" in the Government who never complete their "Probationary or Trial Period," although it be that the employee is employed by the Government for the duration of his life expectancy (classified and unclassified).

> Now, there are in the Government Service a substantial number, not a very large number, but a substantial number of employees who never complete their probationary or trial period, although they are permanent employees. (Hearings, H.R. 7439, Page 11, Now Public Law 733)

EIGHTEEN

That petitioners were not required to service a probationary period.

> . . . the terms of section 14 are equally applicable to veterans in the excepted service as well as to veterans under the competitive system. (Hearings, H.R. 7439, Page 98)
>
> Persons in the excepted or unclassified service are not by law required to serve a probationary or trial period . . . (Hearings, H.R. 7439, Page 98, statement by Chairman of USCS Commission in his Report to the Committee.)

NINETEEN

That respondent's document marked "RETURN" signed by E. T. Groak, Chairman, Board of Appeals and Review is a false indication of the disposition of the document—Stebbins v. Macy #2123-62 USDC DC.

TWENTY

That section fourteen of the Act is arbitrary and capricious.

TWENTY-ONE

That respondents have administered the Act in an arbitrary and capricious manner.

TWENTY-TWO

That respondents have performed acts of fraud upon the Federal Courts in administering the Federal Personnel Laws in general and the "statutory procedure rights" of veterans' preference eligibles in particular.

TWENTY-THREE

That petitioner is a citizen of the United States and the District of Columbia.

TWENTY-FOUR

That respondents submitted false affidavits to the Federal Courts in the following cases for the purpose of obtaining favorable judgments:

Stebbins v. Macy, et al, USDC DC, Number 2132-62, Civil Action.

Stebbins v. Young, et al, USDC DC, Number 3357-56, Civil Action.

TWENTY FIVE

That "Trial Period" or "Probationary Period" for a substitute postal employee is 2,448 hours of duty (9 Federal Register 4563).

TWENTY-SIX

That "Trial Period" or "Probationary Period" for federal employees other than postal employees is one calendar year or twelve months (9 Federal Register 4563).

TWENTY-SEVEN

That manner in which section 14 of the Act is enforced or administered by respondents deprives petitioner of his Constitutional rights under the "due process of law" clause of the fifth amendment to the Constitution of the United States.

WHEREFORE petitioner prays:

(a) That three Judge Court be convened pursuant to the provisions of Title 28 USC Section 2284 and 50 Statutes 752, Section 3, Chapter 754.

(b) That petitioner be granted such other and further relief as to the Court may seem just and equitable.

Respectfully submitted,

/s/ Emmett J. Stebbins
Petitioner
6025 Clay Street, N.E.
Washington, D.C. 20019

Subscribed and sworn to before me this 11 day of March 1965.

My Commission Expires April 14, 1967

/s/ Frances E. Jordan
Notary

II

Petitioner, now, will point out to this Court the false representations made by Chief Judge McGuire of the District Court. (1) Docket entry May 14, 1965 indicates that on May 24, 1965 - Complaint dismissed res judicata United States Court of Appeal D.C. How can a case be determined before a date or event has come to pass or occurred? This entry was made in the docket May 14, 1965, ten days prior to May 24, 1965 — see transcript of record page 2. (2) That petitioner never was granted a hearing at anytime in the court below even though a request was made — see transcript of record page 17. All these acts or omissions are a violation of due process of law as provided by the United States Constitution.

The docket entries are as follows (Record page 2):

March 11, 1965 - Complaint

March 11, 1965 - Summons copies (5) and copies (5) of Complaint issued #1 served 4/6/65. #2 served 3/12/65. #3 served 3/12/65. District Attorney 3/12/65. Attorney General served 3/25/65.

May[1] 11, 1965 - Motion of defendants to dismiss, * * *

May 14, 1965 - Complaint dismissed res judicata United States Court of Appeals District of Columbia May 24, 1965.[2] * * *

May 17, 1965 - Interrogatories of Plaintiff to respondents in care United States Attorney; served May 14, 1965.

May 17, 1965 - Opposition of plaintiff to motion to dismiss; Points and Authorities; service acknowledged May 17, 1965. * * *

May 26, 1965 - Notice of appeal by plaintiff to Supreme Court of the United States; * * *

III

Well Pleaded Facts

All facts well pleaded in complaint must be accepted as true on motion to dismiss. Federal Rules of Civil Procedure, rule 12 (b), 28 U.S.C.A. In a similar manner, the motion to dismiss, like the old demurrer, admits the truth of averments which are well pleaded in the pleading, such as a complaint, to which it is opposed, even

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[1] Petitioner received a copy of the Motion May 12, 1965. Five days subsequent to service the time expires for Petitioner to answer or oppose the Motion. Petitioner's opposition was timely, May 17, 1965. Rule 9 (b), United States District Court for the District of Columbia —

* * * A statement of opposing points and authorities shall be similarly filed, noted and served within five days * * *.

[2] This entry was inserted in the Docket ten (10) days prior to the 24th of May 1965.

though the allegations of the complaint are denied in the answer. In these proceedings the Government filed no answer. See, *Winston v. United States*, 305 F.2d 253, and affirmed by this Court in *United States v. Muniz*, 374 U.S. 150, June 17, 1963.

Mr. Justice Roberts of this Court asserted at page 251 *Hazel-Atlas v. Hartford*, 322 U.S. 238:

> "No fraud is more odious than an attempt to subvert the administration of justice. The Court is unanimous in condemning the transaction disclosed by this record. Respect for orderly methods of procedure is especially important in a case of this sort."

But on October 18, 1965 this Court unanimously condoned fraud and corruption in the case at bar, when it stated:

> Per Curiam.
>
> The appeal is dismissed for want of jurisdiction.

CONCLUSION

For the reasons set forth in this petition for rehearing as well as in the "Jurisdictional Statement" and "Memorandum for Appellant" previously filed, rehearing should be granted and probable jurisdiction should be noted and the appeal allowed.

Respectfully submitted,

EMMETT J. STEBBINS
Appellant, Pro se

CERTIFICATE OF PETITIONER

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for purposes of delay.

Emmett J. Stebbins
EMMETT J. STEBBINS

November , 1965

END